L Aruul a/l S Lurthusamy v Ringganazall a/l Ponnigilee & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO A-02(NCVC)(A)-436–03 OF 2015
ROHANA YUSUF, VARGHESE GEORGE JJCA AND MARY LIM J
2 DECEMBER 2016

Civil Procedure — Judgments and orders — Order made by court — Appellant granted order appointing him as administrator of estate of his deceased wife — Respondents filed originating summons for declarations that order null and void — High Court dismissed application — Respondent filed fresh application seeking similar relief from High Court — High Court allowed application — Whether High Court had jurisdiction under inherent powers to reverse previous decision of concurrent High Court

The appellant had married one Chitradevi a/p Ringganazall ('the deceased') and when she passed away, the appellant applied for and was granted an order ('the order') under the Small Estates (Distribution) Act 1955 appointing him as the administrator of the estate of the deceased. At the time of her death, the deceased was the registered owner of a piece of land known as Lot 4761 in Daerah Kerian ('Lot 4761'). The respondents being the deceased's parents had applied vide High Court Originating Summons No 24NCVC-35–2 of 2013 ('the 2013 OS') for declarations that the order was null, void and of no effects on the ground that the appellant was not the lawful husband of the deceased at the time of their purported marriage as the appellant was still married to one Lily Theresa a/p Anthony Linus Peter ('Lily Theresa'). The High Court dismissed the 2013 OS and ruled that the appellant's marriage to the deceased was valid. On 6 June 2014, the respondents vide High Court Originating Summons No 24NCVC-150–6 of 2014 ('the 2014 OS') had filed fresh proceedings against the appellant seeking identical relief as was earlier sought in the 2013 OS and tendered two new evidence ie decree nisi and certificate making the decree nisi absolute (divorce) in divorce proceedings brought by the appellant against Lily Theresa with respect to his previous marriage. The High Court in the 2014 OS found that the judgment in the 2013 OS was obtained by fraud, hence the court granted the orders sought by the respondents. Aggrieved by the decision, the appellant filed the present appeal. The issue for consideration was whether the High Court in dealing with the 2014 OS had the jurisdiction, purportedly under its inherent powers to in effect reverse a previous decision of a concurrent High Court specifically on the issue of the validity of the appellant's supposed marriage to the deceased.

Held, allowing the appeal and setting aside the orders of the High Court in the 2014 OS with costs of RM2,000:

(1) The finding that a fraud on the court had been committed by the appellant was a serious matter and could not, without a proper trial as to all related facts in issue, be merely based on the two additional documents introduced in the 2014 OS proceedings (see para 19).

(2) There was no breach of any written law or statute occasioned by the orders made by the High Court in the 2013 OS. It was regularly obtained from a court that had jurisdiction and was competent to deal with such an application and issue those orders. Therefore, the learned judge had clearly misdirected himself on the law in proceeding to entertain and consequently granting the orders sought in his 2014 OS including the declaration that the appellant's marriage to the deceased was invalid in law and of no effect (see paras 24 & 27).

[Bahasa Malaysia summary

Perayu telah berkahwin dengan seorang yang bernama Chitradevi a/p Ringganazall ('si mati') dan apabila dia meninggal dunia, perayu memohon untuk dan diberikan perintah ('perintah') di bawah Akta Harta Pusaka Kecil (Pembahagian) 1955 melantik dia sebagai pentadbir estet si mati. Pada masa kematiannya, si mati adalah pemilik berdaftar sebidang tanah yang dikenali sebagai Lot 4761 di Daerah Kerian ('Lot 4761'). Responden-responden sebagai ibubapa si mati telah memohon melalui Saman Pemula Mahkamah Tinggi No 24NCVC-35–2 Tahun 2013 ('SP 2013') bagi deklarasi bahawa perintah tersebut adalah batal, tak sah dan tidak berkuat kuasa atas alasan bahawa perayu bukan suami sah si mati pada masa perkahwinan yang dimaksudkan kerana perayu masih berkahwin kepada seorang yang bernama Lily Theresa a/p Anthony Linus Peter ('Lily Theresa'). Mahkamah Tinggi menolak SP 2013 tersebut dan memerintah bahawa perkahwinan perayu kepada si mati adalah sah. Pada 6 Jun 2014, responden-responden melalui Saman Pemula Mahkamah Tinggi No 24NCVC-150–6 Tahun 2014 ('SP 2014') telah memfailkan prosiding baru terhadap perayu memohon relief yang sama seperti yang dipohon terdahulu di dalam SP 2013 dan menenderkan dua keterangan baru iaitu dekri nisi dan sijil membuatkan dekri nisi mutlak (perceraian) dalam prosiding perceraian yang dibawa oleh perayu terhadap Lily Theresa berkaitan perkahwinan terdahulunya. Mahkamah Tinggi dalam SP 2014 tersebut mendapati bahawa penghakiman di dalam SP 2013 diperolehi melalui fraud, maka mahkamah memberikan perintah-perintah yang dipohon oleh responden-responden. Tidak puas hati dengan keputusan tersebut, perayu memfailkan rayuan ini. Isu untuk pertimbangan adalah sama ada Mahkamah Tinggi dalam berurusan dengan SP 2014 mempunyai bidang kuasa, yang dimaksudkan di bawah kuasa inherensnya pada hakikatnya untuk mengakas keputusan terdahulu Mahkamah Tinggi yang serentak terutamanya atas isu kesahan perkahwinan perayu yang dikatakan kepada si mati.

Diputuskan, membenarkan rayuan dan mengenepikan perintah-perintah Mahkamah Tinggi dalam SP 2014 dengan kos sebanyak RM2,000:

(1) Dapatan bahawa fraud ke atas mahkamah telah dilakukan oleh perayu adalah perkara serius dan tidak boleh, tanpa perbicaraan yang betul terhadap kesemua fakta-fakta berkaitan yang dipertikaikan, hanya didasarkan ke atas dua dokumen tambahan yang dikemukakan di dalam prosiding SP 2014 (lihat perenggan 19).

(2) Tidak terdapat kemungkiran terhadap mana-mana undang-undang tertulis atau statut yang disebabkan oleh perintah-perintah yang dibuat oleh Mahkamah Tinggi di dalam SP 2013. Ia diperolehi secara kerap daripada mahkamah yang mempunyai bidang kuasa dan kompeten untuk berurusan dengan permohonan sedemikian dan mengeluarkan perintah-perintah tersebut. Oleh itu, hakim yang bijaksana jelas salah arah dirinya atas undang-undang dalam prosiding untuk mendengar dan akibatnya membenarkan perintah-perintah yang dipohon dalam SP 2014nya termasuk deklarasi bahawa perkahwinan perayu kepada si mati adalah tak sah dari segi undang-undang dan tidak berkesan (lihat perenggan 24 & 27).]

Notes

For cases on order made by court, see 2(3) *Mallal's Digest* (5th Ed, 2015) paras 5393–5408.

Cases referred to

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393, FC (refd)

Maju Holdings Sdn Bhd v Fortune Wealth (H-K) Ltd and other appeals [2004] 4 MLJ 105; [2004] 4 CLJ 282, CA (refd)

Munusamy a/l Karuppuah v Sang Lee Company Sdn Bhd & Ors [2009] MLJU 988; [2009] MLJU 947; [2010] 3 CLJ 924, CA (refd)

Serac Asia Sdn Bhd v Sepakat Insurance Brokers Sdn Bhd [2013] 5 MLJ 1, FC (refd)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976
Malay Reservation Enactment (FMS Cap 142)
Small Estates (Distribution) Act 1955

Appeal from: Originating Summons No 24NCVC-150–6 of 2014 (High Court, Taiping)

Saranjit Singh GS (Sundarajan & Assoc) for the appellant.
K Paramanathan (Param & Co) for the respondents.

Varghese George JCA:

BACKGROUND

[1] According to the appellant, he had married one Chitradevi a/p Ringganazall ('Chitradevi') on 15 July 2001 at a Hindu Temple in Bagan Serai, Perak. The marriage was claimed by the appellant to have been registered under the Law Reform (Marriage and Divorce) Act 1976.

[2] Chitradevi however passed away on 4 November 2009. There were no children in the marriage. At the time of her death Chitradevi was the registered owner of a piece of land held under HSD9017, PT4761, Mukim Parit Buntar, Daerah Kerian ('Lot 4761').

[3] The appellant applied for and on 8 February 2011 was granted by the Pentadbir Tanah Kerian an order under the Small Estates (Distribution) Act 1955 appointing him as the administrator of the estate of Chitradevi.

[4] The respondents are the parents of Chitradevi. In February 2013, the respondents applied vide Taiping High Court *Saman Pemula* No 24NCVC-35–2 *Tahun* 2013 ('the 2013-*Saman Pemula*') for declarations that the order of the Pentadbir Tanah Kerian of 8 February 2011 was null, void and of no effect, that any endorsements made by the Pentadbir Tanah Kerian in respect of Lot 4761 be cancelled and further that Pentadbir Tanah Kerian rehear the appellant's application for administration/distribution of Chitradevi's estate.

[5] The principal ground relied upon by the respondents for the declarations sought in the 2013-*Saman Pemula* was that the appellant was not the lawful husband of Chitradevi at the time of their purported marriage (15 July 2001). It was alleged that the appellant was still married (since 16 September 1994) to one Lily Theresa a/p Anthony Linus Peter. The respondents tendered a letter dated 11 February 2011 from the Jabatan Pendaftaran Negara as proof of this assertion. This letter also stated that there was no record with the said department of the marriage between Chitradevi and the appellant as claimed to have been registered on 15 July 2001.

[6] The High Court on 27 March 2014 dismissed the respondents' 2013-*Saman Pemula* and ruled that the appellant's marriage to Chitradevi was valid. The court also ordered that the caveat over Lot 4761, that had been entered by the respondents in the meanwhile, be removed. There was no appeal filed by the respondents against that decision.

[7] On 6 June 2014 the respondents filed fresh proceedings against the

appellant vide Taiping High Court *Saman Pemula* No 24NCVC-150–6 *Tahun* 2014 ('2014-*Saman Pemula*') seeking in the main, identical relief as was earlier sought by the respondents in the 2013-*Saman Pemula* and which, as noted above, had been dismissed by the court on 27 March 2014.

[8] The premises relied upon by the respondents in the 2014-*Saman Pemula* were similar, save that in this latest proceedings the respondents annexed as exhibits copies of a decree nisi dated 6 May 2012 and of a certificate making the decree nisi absolute (divorce) dated 13 September 2012, in divorce proceedings brought by the appellant against Lily Theresa a/p Anthony Linus Peter with respect to his previous marriage (Alor Setar High Court *Petisyen Perceraian* No 33NCVC-142–04 *Tahun* 2012).

[9] The 2014-*Saman Pemula* was heard by another judge and on 23 February 2015 the High Court granted the respondents the declarations/orders sought in the 2014-*Saman Pemula*.

[10] The appeal before us by the appellant was against the High Court decision of 23 February 2015 in the 2014-*Saman Pemula*, which, as it would be obvious, was diametrically opposite to, and which in effect reversed, the decision of the same High Court in the respondents' 2013-*Saman Pemula* proceedings.

JUDGMENT OF THE HIGH COURT (2014-*SAMAN PEMULA*)

[11] The court seemed to have been convinced that the appellant had intentionally misled the court in the 2013-*Saman Pemula* and this principally weighed upon the mind of the learned judge in allowing the respondents' 2014-*Saman Pemula*. It was the court's finding that the judgment obtained by fraud or deception on the court in the 2013-*Saman Pemula* proceedings should not be allowed to continue and benefit the appellant. The court in acting so ruled that it had jurisdiction under its inherent powers to right a wrong and to ensure that justice was done.

[12] This was evident from a reading of the following extracts from the *penghakiman*:

> [11] Di dalam guaman terdahulu tersebut, responden telah menafikan alegasi pemohon pertama bahawa perkahwinan beliau dengan mendiang adalah tidak sah. *Walaupun responden mengakui bahawa beliau pernah berkahwin dengan Lily Theresa, beliau menyatakan bahawa perkahwinan tersebut tidak sah, kerana Lily Theresa telah meninggalkan beliau setelah hanya seminggu selepas mereka berkahwin*. Responden menekankan bahawa Lily Theresa telah menghilangkan diri sebelum beliau sempat menyempurnakan perkahwinannya.
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> ...

...

[14] Perbezaan kali ini adalah bahawa pemohon-pemohon dapat mengemukakan bukti bahawa perkahwinan responden dengan Lily Theresa masih wujud semasa beliau berkahwin dengan mendiang.

...

...

[19] *Mahkamah ini mendapati terbukti bahawa responden tidak bercakap benar dalam guaman terdahulu* tersebut, apabila menyatakan bahawa Lily Theresa telah menghilangkan diri seminggu selepas mereka berkahwin, dan beliau tidak pernah berjumpa pagi. Ini adalah kerana *perintah penceraian tersebut dengan jelas membuktikan bahawa pertamanya, responden masih berhubung dengan Lily Theresa selepas perkahwinan mereka, dan keduanya, masih berkahwin dengan Lily Theresa apabila beliau kononnya berkahwin dengan mendiang*.

[20] *Maka adalah nyata bahawa penghakiman yang diberi dalam guaman terdahulu tersebut telah diputuskan atas frod oleh responden*, di mana responden telah memperdayakan Mahkamah menurut peruntukan s 44 Akta Keterangan 1950. Mahkamah ini mendapati bahawa responden telah dengan sengaja memperdayakan Mahkamah dalam guaman terdahulu, apabila tidak mengemukakan fakta dan bukti yang sebenar, iaitu status perkahwinan beliau dengan Lily Theresa.

[21] *Mahkamah ini mempunyai bidangkuasa untuk memastikan keadilan dapat dijalankan*, dan memastikan supaya pihak yang teraniaya atau yang mempunyai hak, mendapatkan hak mereka yang sah. Adalah perlu untuk Mahkamah ini memastikan supaya responden tidak dapat manfaat dari sebarang penghakiman yang telah diperolehi oleh frod atau penipuan; *Chee Pok Choy v Scotch Leasing Sdn Bhd* [2001] 4 MLJ 346 (MR).

... (Emphasis added.)

THE APPEAL

[13] The appellant's contention before us in this appeal, in summary, was as follows:

(a) the High Court was 'functus officio' after the delivery of the decision in the 2013-*Saman Pemula* proceedings (*Munusamy a/l Karuppuah v Sang Lee Company Sdn Bhd & Ors* [2009] MLJU 988; [2009] MLJU 947; [2010] 3 CLJ 924 (CA));

(b) the High Court should not have entertained the 2014-*Saman Pemula* which clearly was intended to review the final decision of a court of concurrent status in the 2013-*Saman Pemula* proceedings;

(c) the respondents ought to have filed an appeal if they were dissatisfied with the outcome of the 2013-*Saman Pemula* proceedings and unless such an appeal was filed, the respondents were precluded by the doctrine of res judicata from relitigating the issues and seeking for the same relief,

which has been conclusively refused by the court; and

(d) the additional or fresh evidence adduced by the respondents in the 2014-*Saman Pemula* was, in any event, available and could have been obtained by the appellant with reasonable diligence before the conclusion of the proceedings in the 2013-*Saman Pemula* (*Maju Holdings Sdn Bhd v Fortune Wealth (H-K) Ltd and other appeals* [2004] 4 MLJ 105; [2004] 4 CLJ 282 (CA)).

[14] The respondents' submission on the other hand was that the High Court had rightfully exercised its powers under its inherent jurisdiction to deal with and allow the prayers in the 2014-*Saman Pemula*. The learned judge, it was argued, was not in error to reverse the defective orders issued by the court in the 2013-*Saman Pemula* proceedings.

OUR DELIBERATION AND DECISION

[15] At the outset it was relevant to take note that there was no prayer by the respondents in the 2014-*Saman Pemula* to set aside any of the orders of the High Court of 27 March 2014 dismissing the respondents' earlier 2013-*Saman Pemula*. It was also equally pertinent to note that the orders granted by the High Court on 23 February 2015 in the 2014-*Saman Pemula* proceedings did not expressly advert to or set aside any of the orders which had been made by the court when dismissing respondents' earlier 2013-*Saman Pemula*.

[16] The High Court order of 27 March 2014 in the 2013-*Saman Pemula* contained a significant finding in the following terms:

> (b) Perkahwinan Responden dengan Chitradevi a/p Ringganazall adalah sah.

In the 2014-*Saman Pemula* however, the order of the court was plainly to a contrary effect, namely, as follows:

> *MAKA ADALAH PADA HARI INI DIPUTUSKAN* bahawa perkahwinan di antara L Aruul a/l S Kurthusamy ... dan Chitradevi a/p Rengganazall ... si mati pada 15/7/2001 ... tidak sah di sisi undang-undang dan terbatal.

[17] On record now there were two contradictory pronouncements of the court on the same issue pertaining to the validity of the 'marriage' between the appellant and Chitradevi. The conclusion arrived at by the learned judge in the 2014-*Saman Pemula* appeared to be premised solely in the 'Decree Nisi' and the 'Certificate Absolute' which had been produced by the respondents in this later proceedings, as could be discerned from the following statements in the *penghakiman*:

> ... perintah penceraian tersebut dengan jelas membuktikan bahawa pertamanya, responden masih berhubung dengan Lily Theresa selepas perkahwinan mereka ...,

and:

> ... adalah nyata bahawa penghakiman yang diberi dalam guaman terdahulu tersebut telah diputuskan atas frod oleh responden ...

[18] It need be pointed out that there was no other evidence referred to or for that matter, even adduced and made available to the learned judge save the 'Decree Nisi' and 'Certificate Absolute'. We were baffled as to how merely on those two documents now produced the court could conclude that the appellant was in a continuous relationship with Lily Theresa and a fraud had been committed in having the 2013-*Saman Pemula* dismissed and an order therein obtained as to the validity of his marriage with Chitradevi.

[19] The learned judge himself had noted that the appellant had acknowledged before the court that he had married Lily Theresa but she had deserted him immediately after the marriage and that the appellant therefore considered himself no longer married to her. It was not totally inconceivable that the appellant's marriage with Lily Theresa was a sham from the beginning as claimed by the appellant and the appellant had only taken steps lately to dissolve it for purposes of the records. In any event, there was no evidence that the fact of the divorce proceedings had been intentionally supressed by the appellant. In our assessment, the finding that a 'fraud on the court' had been committed by the appellant was a serious matter and could not, without a proper trial as to all related facts in issue, be merely based on these two additional documents introduced in the 2014-*Saman Pemula* proceedings.

[20] *Be that as it may*, the single and short question on which this appeal turned, in our considered view, was whether the High Court in dealing with the 2014-*Saman Pemula* had the jurisdiction, purportedly under its inherent powers, to in effect reverse a previous decision of a concurrent High Court here specifically on the issue of the validity of the appellant's supposed marriage to Chitradevi.

[21] Counsel for the respondent cited to us the decision of the Federal Court in *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393 as authority for the proposition canvassed, namely, that the High Court had unlimited inherent jurisdiction even to set aside 'defective' orders previously issued by a High Court to meet the ends of justice.

[22] It must be pointed out that *Badiaddin* was a case where an order for sale had been issued by the High Court clearly in breach of a written law or a statutory provision under which such an order could not be sustained (in that case, the Malay Reservation Enactment (FMS Cap 142). Another judge of the High Court had thereafter set aside that order. The Court of Appeal on appeal

against the setting aside order held that the High Court was 'functus officio' and could not set aside the originally made order for sale. The Federal Court however ruled that the High Court could set aside its own previous order if it was shown that the first order was a nullity. Speaking through Mohd Azmi FCJ, the apex court noted that the discretion to invoke the inherent jurisdiction should always be exercised judiciously only in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice.

[23] The following excerpts from that judgment are illuminative of this guidance on the exercise of inherent jurisdiction reposed in the courts:

Per Mohd Azmi FCJ:

> *It is of course settled law* as laid down by the Federal Court in *Hock Hua Bank*'s case that *one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction*. But *one special exception to this rule* (which was not in issue and therefore not discussed in *Hock Hua Bank*) is *where the final judgment of the High Court could be proved to be null and void on ground of illegality or lack of jurisdiction* so as to bring the aggrieved party within the principle laid down by a number of authorities culminating in the Privy Council case of *Isaacs v Robertson* [1985] AC 97 where Lord Diplock while rejecting the legal aspect of voidness and voidability in the orders made by a court of unlimited jurisdiction, upheld the existence of a category of orders of the court '*... which a person affected by the order is entitled to apply to have set aside ex debito justitiae in the exercise of the inherent jurisdiction of the court*, without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity, and give to the judge a discretion as to the order he will make.
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> For my part, I must hasten to add that apart from breach of rules of natural justice, in any attempt to widen the door of the inherent and discretionary jurisdiction of the superior courts to set aside an order of court ex debito justitiae to a category of cases involving orders which contravened 'any written law', *the contravention should be one which defies a substantive statutory prohibition so as to render the defective order null and void on ground of illegality or lack of jurisdiction*. It should not for instance be applied to a defect in a final order which has contravened a procedural requirement of any written law. *The discretion to invoke the inherent jurisdiction should also be exercised judicially in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice. In all cases, the normal appeal procedure should be adopted* to set aside a defective order, unless the aggrieved party could bring himself with the special exception.

Per Gopal Sri Ram JCA:

> Of course, so long as an order of a court is unlimited jurisdiction stands, irregular

> though it may be, it must be respected. *But where an order of such a court is made in breach of statute, it is made without jurisdiction and may therefore be declared void and set aside in proceedings brought for that purpose. It is then entirely open to the court, upon the illegality being clearly shown, to grant a declaration to the effect that the order is invalid and to have it set aside. It is wrong to assume that such an order may only be corrected on appeal.*
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> It is therefore clear, in light of the principles established by high authority, that *a court of unlimited jurisdiction, even in the absence of an express enabling provision, has inherent power to set aside its orders made in breach of written law. The ends of justice will not be met if such a power did not exist*. And the procedural branch of the broad and flexible doctrine of estoppel known as res judicata finds no place in such a circumstance. Neither has the functus officio theory, which, upon close examination is merely part and parcel of the doctrine of res judicata, any role to play in the case. (Emphasis added.)

[24] There was in this instant case no breach of any written law or statute occasioned by the orders made by the High Court in the 2013-*Saman Pemula*. It was regularly obtained from a court who had jurisdiction and was competent to deal with such an application and issue those orders. The learned judge who gave those orders might perhaps have misdirected himself in law or on the facts surrounding the grievance or issue. That was however a matter to be taken up in a proper appeal to be brought against that decision by an aggrieved party.

[25] We have also now the benefit of further observations of the Federal Court on this issue. In the judgment in *Serac Asia Sdn Bhd v Sepakat Insurance Brokers Sdn Bhd* [2013] 5 MLJ 1. Abdull Hamid Embong FCJ shed further light on this subject in the following passages:

> [35] *We are thus in agreement with the appellant's stand that an earlier judgment can only be impeached when it is prohibited by statute*; and that Badiaddin to us merely reaffirmed that rule and does not extend the inherent jurisdiction of the court to correct a perfected order or judgment beyond any statutory prohibition. ... We think that the *Badiaddin*'s phrase 'to intervene and correct a serious defect in the order' should be read in the context of *where an order was obtained in a manner which contravened a statute, resulting in that order being illegal or made outside the jurisdiction of the court*. It is in this respect that the court's inherent jurisdiction may be exercised, to strike out an earlier order, ex debito justitiae and without the need for file a fresh unit.
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> [36] *As regards the appellant's submission on the court being functus officio and that a fresh suit needs to be filed to strike out a previous regularly obtained order on the ground of fraud, we adopt the finding of this court in Hock Hua Bank Bhd v Sahari bin Murid [1981] 1 MLJ 143 which we think has settled these issues*. The headnotes from the report in that case, which need no further explanation, or expansion, is now

reproduced as our answer to those related questions:

> In this case the learned judge had made an order for sale in a foreclosure proceeding. The order was made after hearing all the parties and was made despite a claim of *non est factum* and allegations of fraud and forgery by the respondent. The order was drawn up and perfected. There was no appeal against it. The respondent applied to set aside the judgment and this application was refused. Subsequently the respondent applied again to set aside the previous orders. The learned judge thereupon set aside his order. The appellant appealed. Held:
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> (1) the learned judge was functus officio;
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> (2) the court had no power under any application in the same action to alter, vary or set aside a judgment regularly obtained after it had been entered or an order after it has been drawn up, except under the slip rule, so far as is necessary to correct errors in expressing the intention of the court, unless it is a judgment by default or made in the absence of a party at a trial or hearing;
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> (3) *if a judgment or order has been obtained by fraud or where further evidence which could not possibly have been adduced at the original hearing is forthcoming, a fresh action will lie to impeach the original judgment;*
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> (4) *in this case the learned judge had no jurisdiction to set aside his own order and the original order must be restored, leaving it to the respondent to take out a fresh action to set aside the order on the ground fraud.*

[26] Having given the matter our utmost consideration, we were of the view that the recourses validly open to the respondents in the circumstances was, either:

(a) to appeal against the order of court of 27 March 2014 in the 2013-*Saman Pemula*, and therein possibly apply for material further or fresh evidence to be adduced, to have any order made therein reversed; or

(b) to institute separate proceedings by way of a writ action to impeach any of the orders issued in the 2013-*Saman Pemula* on the grounds that those orders had been obtained by the appellant upon a fraud or deception being perpetrated on the court to secure those orders.

[27] The learned judge had therefore in this case, with respect, clearly misdirected himself on the law in proceeding to entertain and consequently granting the orders sought in his 2014-*Saman Pemula* including the declaration the appellant's marriage to Chitradevi was invalid in law and of no effect.

[28] In the result we allowed the appeal. The orders of the High Court in the 2014-*Saman Pemula* were set aside. The appellant was allowed costs of RM2,000. The deposit was ordered to be refunded to the appellant.

Appeal allowed; orders of High Court in the 2014 OS set aside with costs of RM2,000.

Reported by Dzulqarnain Ab Fatar